IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.1376 of 2005

Date of decision: 17.7.2007.

Managing Director, HRTC and another ....Petitioners

-Versus-

Hari Krishan Pal and another ….Respondents

Coram:
The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? No

For the Petitioners: Mr.R.K. Gautam, Senior Advocate with Mr.Naveen Bhardwaj, Advocate.

For Respondent-1: Mr.Rakesh Manta, Advocate.

Deepak Gupta, J.(Oral)

This case discloses a shocking state of affair wherein an inferior authority i.e. the Presiding Judge of the H.P. Labour Court has virtually set at naught a judgment delivered by a Division Bench of this Court. This judgment smacks of legal indiscipline and in case the Officer had not retired from service we would have been constrained to take appropriate action against him.

The services of the petitioner who was employed as a Conductor were terminated by the HRTC on 30.7.1976. He thereafter filed a writ petition No.171 of 1982 before this Court. This petition was dismissed by this Court by passing the following order:

> "9.8.1982. Present: Mr.A.K.Goel, Advocate, for the petitioner.
> Mr.D.K.Khanna, Advocate for the respondents.

One of the contentions of Mr.Goel is that his appeal against the impugned order of termination of service has not so far been decided though the appeal was preferred as far back as 23rd September, 1976. Mr.Khanna states this appeal was duly decided and the petitioner was intimated on 21st September, 1977. This appeal was dismissed. Mr.Goel states that he never received the intimation about the result of his appeal.

Mr.Khanna has stated before us that thereafter the petitioner had approached the authorities to have mercy on him and so he was re-employed in July, 1979, on daily wages at Parwanoo. He had to be removed again on 18th November, 1979 because of his conduct in not issuing the tickets and having pocketed the money given by the passengers in respect of the tickets. Again the petitioner approached the authorities to have mercy on him. He was thus able to persuade the General Manager to employ the petitioner on 18th November, 1980 in Simla Region and his service had again to be terminated on 27th December, 1980 because on the similar incident having been detected of the petitioner pocketing the fare. Mr.A.K. Goel states that subsequent employments are irrelevant and that is why he has not cared to mention them in the writ petition. Dismissed.

Sd/-
(Vyas Dev Misra),C.J.
Sd/-
(H.S. Thakur),J."

It is apparent from the tenor of the order that the writ petition was dismissed because of non-disclosure of material facts by the petitioner. It would also be pertinent to mention that a perusal of this order clearly shows that the appeal filed by the petitioner had been rejected on 21st September, 1977 by the appellate authority. Thereafter, on mercy application of the petitioner he was re-engaged in July, 1979 on daily-wage basis but was removed on 18th November, 1979 because it was alleged that he had pocketed money paid by the passengers. He was again re-employed on 18th

November, 1980 but his services were again terminated because of similar incident of pocketing the fare paid by the passengers.

Sh.Rakesh Manta has relied upon a judgment of the Apex Court in **The Workmen of Cochin Port Trust vs. The Board of Trustees of the Cochin Port Trust and another, AIR 1978 SC 1283.** This judgment has also been relied upon by the Presiding Officer of the Labour Court. No doubt, this judgment says that when a petition is dismissed in limine without going into the merits of the case it does not operate as resjudicata. However, in the present case the petition was not dismissed without going into the merits of the case. Secondly this judgment only applies to a subsequent writ petition filed in the same Court. The inferior Court cannot circumvent the authorities of the higher Court by taking such a plea.

This Court had passed a short but reasoned order dismissing the writ petition. The Presiding Officer of the Labour Court had held that since the petition has been dismissed in limine and has not been disposed of on merits he was not bound by the order passed in the said writ petition. We are shocked and surprised to note that the Presiding Officer has not cared to see that the petition was dismissed after touching the entire facts of the case. There may be cases where a writ petition may be dismissed by the High Court on the ground of delay and laches. There may be other cases where the writ petition is dismissed on the ground that a party has not disclosed material facts and has tried to mislead the Court. Can an inferior authority ever sit over a judgment of this Court? Obviously the only

answer can be that he cannot do so. The inferior authority cannot by-pass or circumvent the orders of this Court by such means.

Further we find that the order of dismissal under challenge was passed on 30.7.1976. The appeal was rejected on 21.9.1977. The writ petition was dismissed on 9.8.1982. There is no explanation as to what the petitioner was doing for a period of 20 years. This question has virtually not been dealt with by the Labour Court though specific plea in this regard was taken. It is only held that the law of limitation is not applicable to the Industrial Disputes. By now the law is well settled that even though the law of limitation will not be applicable, stale claims cannot be brought before the Labour Court. The impugned order is contrary to the settled legal position.

In view of the fact that the High Court in the earlier writ petition had clearly upheld the order of termination and rejected the petition filed by the petitioner challenging the very same order the Labour Court had no business whatsoever to set-aside the said order. We have, therefore, no option but to allow the writ petition.

The writ petition is accordingly allowed and the order of the Presiding Judge, Labour Court in Ref.No.4 of 2000 dated 22.8.2005 is set-aside and the reference made by the Government is answered against the workman. He is not entitled to any relief whatsoever. There will be no orders as to costs.

In view of disposal of the writ petition, CMPs No.2585 of 2005 & 1076 of 2007 are also disposed of.

(Deepak Gupta),
Judge

July 17, 2007.
PV

(V.K. Ahuja),
Judge